



Giving Us Ways to Give Back: Pro Bono Options for the Legal Specialist

By Tina L. Rasnow*

Despite the large numbers of attorneys in California, many people are unable to access the services of an attorney. This is due not only to the high cost of legal representation, but the high cost of living in California, leaving less disposable income for even modest wage earners to hire an attorney. California has the largest low-income population of any state. Those who live just above the poverty line face even greater challenges accessing legal assistance since their income may not qualify them for the few free legal services programs yet they cannot afford to pay an attorney. As

a result, large numbers of Californians are simply denied meaningful access to justice. Certified legal specialists can provide vitally needed assistance to people through pro bono services donated through a local legal services program, non-profit, or bar association volunteer lawyer services program.

Volunteering Through a Pro Bono Program

A fair number of local bar associations have volunteer lawyer services programs (VLSP's) through which attorneys can agree to accept one, two, or several pro bono case assignments a year.

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Tina L. Rasnow

Chapter 7 Bankruptcy Eligibility

By Michael T. O'Halloran*

This is a battlefield report from the Debtor-Creditor Wars concerning the impact of the October 2005 amendments to the federal Bankruptcy Code on individuals wanting to file Chapter 7 bankruptcy. The changes were passed in legislation named the Bankruptcy Abuse and Consumer Protection Act of 2005 ("BAPCPA"). The accruing experience under the amended law indicates that the commercial sponsors of the amendments to the law were somewhat successful in making Chapter 7 less available to individuals. Below is a review of the categories of individual

debtors with the best and worst prospects for eligibility for Chapter 7.

Below-Average Income Debtor

The old rules regarding income disqualification for Chapter 7 remain largely unchanged if the debtor has household income at or below the state average for size of the debtor's family. For example, the California average income for a single person is \$44,499 and \$72,996 for a family of four persons. A debtor with income below the state average does not face the close scrutiny of income and expenses given to a debtor with income above the state

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average. Thus, the low-income debtor generally will not have difficulty qualifying for Chapter 7 bankruptcy based on income, although he/she is required to submit a budget to show that there is not significant disposable income in the household. Given the high costs of living in California in 2007, this rarely disqualifies a debtor from Chapter 7 eligibility.

Above-Average Income Debtor

It is the above-average income debtor that faces the strictest review of household income and expenses. This was a major change wrought by BAPCPA to the Bankruptcy Code. The two factors that most influence the eligibility of an above-average income debtor are: 1) the type of debts presented and 2) whether the debtor rents or owns a residence.

Form B-22

New bankruptcy Form B-22 presents a five-page Rube Goldberg formula that calculates the amount of money deemed available to pay the debts of the Chapter 7 debtor. This form must be utilized by a debtor who has: 1) income above the state average for the debtor's

household size and 2) at least 51% consumer debt. The deductions from income are of three types:

- actual expenses
- dictated expenses,
- extraordinary expenses

Where the debtor with consumer debts has disposable income in excess of \$167 per month according to the B-22 formula, the debtor's case is presumed to be an "abuse" of the bankruptcy process and the Chapter 7 case faces a motion to dismiss.

A debtor with income below the state family size average does not have to undergo a Form B-22 analysis. All debtors with income above average must qualify for Chapter 7 by submitting to the B-22 gauntlet, with one exception.

The B-22 analysis process for high-income debtors does not apply to a person who has at least 51% non-consumer debt. It is important to appreciate the linguistic structure of the debtor definitions. The debtor world is divided into consumer vs. non-consumer debts. Unfortunately, the bankruptcy petition categorizes cases as "consumer" vs. "business", but this distinction is not supported by the statutory text.

"Consumer debt" is defined in Bankruptcy Code Section 101(8) as "... debt incurred by an individual primarily for a personal, family, or household purpose." Any other type of debt is not consumer debt. It would not have to be related to a business venture. For example, where a tornado blew a rake from one yard through the window of an adjoining house and caused that house to burn down, the resulting liability would seem not to fall within the definition of a consumer debt. If true, then if a majority of debts are not consumer debts, even if not business debts, the close scrutiny of Section 707(b) and Form B-22 should

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**To contribute to the Digest,
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The Legal Specialization Digest is a bi-annual newsletter written by and for certified specialists, containing articles of interest to legal specialists. The Digest also contains periodic updates on the certification program, general information from the State Bar and the Board of Legal Specialization, columns from the BLS Chair and BLS members, attorney profiles, and more.

Message from the Chair

My first act as Chair of the Board of Legal Specialization was to present the Board of Governors with the final work of the Consulting Group formed to develop a specialty in Franchise and Distribution Law. The Board of Governors unanimously approved the new specialty at that meeting.

I would like to take full credit for this excellent work because it culminated

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California was the first state to regulate the sale and operation of franchises and distribution agreements. It is appropriate, then, that we are the first state to have a certified specialty in Franchise and Distribution Law. Again, congratulations to the Franchise and Distribution Law Consulting Group and the new Advisory Commission.

The recent visit of the luxury liner, Queen Elizabeth II, to San Francisco was timed perfectly for me to announce that we have yet another new specialty well on its way to becoming a reality - Admiralty and Maritime Law. From what I have learned about this area of the law, it, too, fits nicely into our charge of certifying legal specialists in California. If we are successful, California will be the second state with such a certified specialty - only the State of Florida currently offers Board Certification in Admiralty and Maritime Law.

Admiralty or Maritime Law is a distinct body of law (both substantive and procedural) which governs navigation and shipping. Admiralty law in the United States developed from the British admiralty courts which were present in most of the American colonies before the Revolutionary War. These courts functioned separately from courts of law and equity.

Today, however, the courts and Congress have sought to create a uniform body of admiralty law both nationally and internationally in order to facilitate commerce. The federal courts derive their exclusive jurisdiction over this field from Article III, § 2 of the U.S. Constitution and from the Judiciary Act of 1789. Congress has historically regulated admiralty partially through the Commerce Clause.

American admiralty law extends to any waters navigable within the United States for interstate or foreign commerce. Admiralty jurisdiction in such

waters also includes maritime matters not involving interstate commerce, including recreational boating. When Congress enacted the Judiciary Act of 1789, Congress placed admiralty matters under the jurisdiction of the federal district courts. Although admiralty and maritime law shares much in common with civil law, they are separate. Common law does not act as binding precedent on admiralty courts but it, along with other law, is often used when there is no maritime law on point.

California, too, has its own set of laws applicable to navigable waters of the United States located in this state. They are set forth in the California Harbors and Navigation Code, and are operative in so far as they are not in conflict with the admiralty and maritime jurisdiction and laws of the United States.

We have formed a Consulting Group to begin the development of a specialty in Admiralty and Maritime Law. As with Franchise and Distribution Law, we were approached by a group of

enthusiastic lawyers who practice in this field. They have a vision of how the Board of Legal Specialization can assist them in insuring that only qualified individuals hold themselves out as "Certified Specialists," while at the same time protecting the public from those who are not qualified to do so. We hope that this process proceeds as smoothly as it did in the Franchise and Distribution Law specialty. ■

**Myron S. Greenberg is certified in Taxation Law by The State Bar of California Board of Legal Specialization. He practices tax, estate planning, probate and trust administration law in Larkspur, California. He is also licensed as a CPA. He is the current Chair of the California Board of Legal Specialization. He is a past President of both the Marin County Bar Association and the Marin County Estate Planning Council.*

Director Phyllis Culp Honored by Attorney General

Phyllis Culp, the director of legal certification for the State Bar, recently celebrated 20 years of service to the Bar. In honor of Phyllis' anniversary, Attorney General Bill Lockyer offered the following words of appreciation just prior to his leaving office. "Under Ms. Culp's leadership, legal specialization has increased dramatically, along with a higher level of professionalism and ethics. Other state bars look to California as one of the leaders in setting professional standards for specialization."

Phyllis joined the State Bar in 1986 as a staff attorney. Through the years

she has served the Bar in many capacities. In 2002 she became director of the Office of Certification, which is now the Office of Special Admissions & Specialization.

Everyone that has worked with Phyllis can attest to the fact that her commitment to the State Bar has resulted in a legal certification program—including more than 4200 certified specialists—that is second to none in serving California's legal consumers.

Congratulations, Phyllis!

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VIP Mentors is a unique statewide mentoring organization founded by attorneys more than 35 years ago. All VIP mentors are attorneys and all mentees are young men and women on parole. Over the years, VIP's volunteer attorney mentors have helped thousands of former offenders turn their lives around.

It only takes a few hours a month. There are no required activities and mentors may not be asked to provide legal representation to their mentees. Just be a guide, advisor and good friend to someone who desperately needs your assistance.

For more information or to sign up, call toll free 1-877-484-7462 or visit www.vipmentors.org. Your new mentee might turn out to be one of the most interesting friends you have ever had! ■



Technical Notes from Bovitz.com: Powerful Presentations

J. Scott Bovitz*

Certified specialists are always on the lecture circuit. Here is my checklist for trouble-free presentations.

CONFIRM THE TALK AND AUDIO-VISUAL DETAILS

I obtain the name and complete contact information (including the home and cell phone number) of the program chair.

I always send a confirming letter. I give my complete contact information, including my home, cell, and work telephone numbers. I state my wish list for the audio-visual goodies.

I ask the program chair to meet me at the location at least 60 minutes before the presentation.

I ask about and investigate the demographics of my audience. What does the sponsor's web site say about the group's mission and purpose? Do I know anyone in the group who can answer questions about the group's special interests and taboos?

What topics am I going to cover?

How long is my speech? Will there be other speakers at the program? Am I required to coordinate with them?

Will the group provide me with a projector and screen for my program slides? Will I be running my own slide show? What is the contact information for the individual who will be bringing the projector and the screen?

Will the audio-visual person be in the room for the entire time? In the typical conference at a hotel, the audio-visual representative will not remain in the room during the speech. If there is a problem, how can I reach the audio-visual person?

Do I need to register for the program? How?

Do I make my own travel arrangements? Will there be an honorarium or salary?

Does the group want or expect written materials? (Does the host want separate written materials in addition to the printed slides? Who will print the slides and written materials?)

Slide shows tend to be quite large. I ask if there is a limit on the size of attachments that I can send to the program chair. I confirm that my contact has PowerPoint or Flash (so that the program chair can read and print my materials). If not, I send a PDF version of the program slides.

About 30 days before the talk, I check the group's web site. I check to see if my program is listed and the location of the presentation. I also check for typographical errors.

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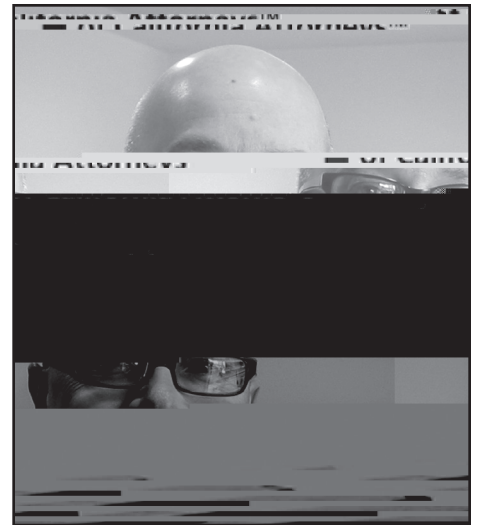
I send a confirming note about a week before the program. I make sure that I have confirmation of all presentation details.

MATERIALS AND SUPPLIES

I always prepare slides for my programs. I use Microsoft PowerPoint and Adobe Flash. PowerPoint is easier to use; Flash is more flexible and (sorry!) flashier.

As a rule of thumb, I prepare a slide for every minute of my program. My audience wants action.

For substantive slides, I use plain black



J. Scott Bovitz

text on a white background for all but the largest screens. When possible, I add color and pictures in my slide show.

When the presentation is over, and unless the group objects, I post the slides on my web site. My slides can usually be understood by someone who was not present at the speech.

On my slides and other printed materials, I put my complete contact information. I usually start with a cover (title) slide. The second slide includes my biography and contact information. The third slide is usually the first substantive slide.

I practice the speech -- with the slides -- to check my pacing.

THE DAY BEFORE THE PROGRAM

I place a shortcut on my desktop to the slide show.

I copy the slides to a thumb (USB) drive and a CD in two formats: the PowerPoint or Flash slides in native format; and the PowerPoint or Flash in a "pack-and-go" format (with a viewer to run these programs on any computer). I pack these in my carry-on bag.

I post a copy of the program on my own web site, on a secret page. In a pinch, I may be able to gain access and download the slides.

I pack 10 or 20 printed copies of the materials, as extra handouts. One will

serve as my program notes in case my computer or the power fails.

I pack: my laptop computer, loaded with the PowerPoint/Flash slides; an extra battery; my own Dell computer projector (in case I cannot sync up with the projector provided by the host or the picture is poor); an extension cord; a multiple outlet/power surge box; the power supplies and duplicate cables for my laptop and projector; a small flashlight (to look under tables when I am setting up); the printed materials; the manuals for the laptop and projector; a pen; a small pad of paper; my cell phone; a map and directions to the location; a nine volt battery (for the handheld microphone); an infra-red or Bluetooth mouse; "Gaffer's tape" from Guitar Center or Home Depot; party favors (e.g., guitar picks with "bovitz.com" printed on them); and business cards.

I run through my program slides and read my written materials.

ONE HOUR BEFORE THE PRESENTATION

I meet the audio-visual technician. I confirm that the microphone has a new battery. I ask the representative to put out an extra battery for me. I walk all around the room and test for feedback zones.

I hook up the projector to the laptop, as if the projector was an external monitor. I adjust the location of the projector table so that the projection fills the entire screen. If I am using a Bluetooth or wireless mouse, I test to determine the working range of the mouse.

I turn my computer to the "always on" setting so that the computer will not go to sleep before the program starts. I put down Gaffer's tape to prevent someone from tripping on the power cord.

I do not look at the watch on my wrist during the presentation. I put my watch on the table where I can see it at

a glance. I write down the START and STOP times on a small pad of paper. I jot down the 25%, 50%, and 75% waypoints. I write down the slide numbers I hope to be covering at key times.

FIFTEEN MINUTES BEFORE THE SPEECH

I talk to the program chair, again. I confirm my start and end times. I review my notes (the printed slides). I confirm that everything is still plugged in. I take everything out of my pockets, except my party favors.

THE SPEECH

I try to speak slowly. I remember to take big breaths. I speak directly to my audience.

I never sit while I speak. I walk around and talk to the people in my audience. If I cannot leave the stage, I look directly at people in my audience and talk to them individually.

If I absolutely must sit at a table, I talk into the microphone. I do not turn my head to the side, even if I am answering a question from another panelist. I don't pound on the table, in case the program is being recorded. I talk about six inches away from the microphone.

If I can walk around in the audience, I ask questions of my audience members. I never give the microphone to the audience member, but I will point the microphone to my captive audience member so that everyone can hear his or her question or comment.

If I don't have time for questions, then I say so. I tell the group that I will stay after the program to answer any questions. I allow at least 45 minutes for such questions after the program.

I follow the slides...but I do not read the slides to the group. I summarize the key point from each slide. I do not need or use notes, since I have the slides to remind me of the key concepts I want to convey.

Every now and then, I give away a party favor.

Time will race by, so I glance at my watch (on the table) from time to time. I stay on track.

If I need to skip a few slides, I just go to the next important slide. To keep my audience in the loop, I will say, "I am going to skip to slide 37 now."

I make short concluding remarks. I thank the group for inviting me. I remind them that the program materials will be on my web site; I remind the group of my URL (web address).

AFTER THE PRESENTATION

People will come up to thank you for the presentation. I ask the name of each individual. I ask for each person's business card. I give one of my own. I put these folks in my contact database.

I write a thank you letter to the group's representative. ■

Send your own tips (and war stories) about public speaking to bovitz@bovitz-spitzer.com.

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The Tax Increase Prevention and Reconciliation Act of 2005, signed into law on May 17, 2006, offers significant tax planning opportunities for both songwriters and music publishers. The potential tax breaks for songwriters are especially ground-breaking. For the first time, self-created musical compositions or copyrights in self-created musical works may electively be treated as capital assets.

Why does this matter? Because gain upon the sale of a long-term capital asset (i.e., an asset held more than 12 months) is generally taxed at an extremely favorably 15% rate, in lieu of regular personal income tax rates ranging as high as 35%. In related music-industry legislation, buyers of such property can elect to write off the purchase price over a five-year amortization schedule. The gist of the provision enables music publishers who buy copyrights to take a tax deduction for the purchase price (including songwriter advances) ratable over five years. Let's take a closer look at those favorable new laws.

Capital Gains Treatment for Self-Created Musical Works

Under prior law, musical compositions or similar property were not considered "capital assets" in the hands of its creator. Conversely, the same songs in the hands of the music publisher who bought those copyrights were considered tax-favored "capital assets." Not only could the music publisher take a tax deduction for the cost of acquiring the copyrights (as an amortized yearly percentage of the purchase price), but the subsequent resale of such copyrights would be at a tax favored capital gains rate of 15% (provided the songs had been held by a non-corporate publisher for at least the one-year

long-term capital gains period). The new law redresses this imbalance in tax rates between songwriters and publishers. To quote from the Congressional Committee Report: "...it is appropriate to allow taxpayers to treat as capital gain the income from a sale or exchange of musical compositions or copyrights in musical works the taxpayer created."

As initially enacted, songwriters seeking to take advantage of the favorable tax capital gain rate had to pay careful attention to both the effective and termination dates of the new law. Special capital gains treatment applies only for sales occurring in taxable years beginning after the effective date of the new law. Although this law took effect on May 17, 2006, a songwriter's next tax year would begin on January 1, 2007. *This was a real trap for the unwary!* A songwriter selling a catalog *before* 2007 would incur federal tax rates up to 35%, while postponing the sale until 2008 could save up to 20% in taxes! Initially this favorable capital gains election for self-created musical works was set to expire on December 31, 2010. Fortunately for songwriters, it was made permanent on December 21, 2006 by the Tax Relief and Health Care Act of 2006 (P.L. 109-432). However, the new capital gains rate is not automatic! A songwriter selling compositions held more than 12 months must still affirmatively elect the lower tax rate.

The new law does not define what constitutes a self-created "musical com-

year period beginning with the month during which the property was “placed in service” (for example, when a song gets exploited). Both songwriters who incurred expenses creating “applicable musical property” and music publishers who acquire them can take advantage of the new five-year schedule.

Conclusion.

Since the effective dates for tax

Pro Bono Options

Continued from Page 1

Legal services programs that receive LSC funding, such as California Rural Legal Assistance or Neighborhood Legal Services, are generally required, as a condition of their grants, to incorporate a volunteer attorney participation program within their legal services delivery to the community. These programs can often provide free continuing legal education to attorneys in the subject matters handled by the legal services programs, and can also integrate the volunteer attorney's particular expertise into the other services provided to their low income client base. For example, a tax attorney may donate half a day once a month to advise those who are having their tax refunds garnished, or who have failed to file returns and may have civil tax liability issues. The tax attorney could also train the legal services program staff about earned income tax credit, how to inform the working poor about their rights to obtain this credit, and how to help them complete the proper forms.

There are several advantages to performing pro bono service through an established VLSP or legal services program: 1) the program does the initial screening of the case and client to determine income eligibility and case merit; 2) the program generally will provide errors and omissions insurance coverage for the volunteer attorneys; 3) the program can help locate additional support services, including possible reimbursement of deposition court reporter fees from a fund designated for legal services clients; 4) the program can often provide training and consultation assistance where outside subject matter expertise is required; and 5) the program can capture, document and publicize the number of volunteer hours donated to increase public awareness of the good work lawyers perform,

and encourage other attorneys to volunteer their services as well.

Limited Scope Representation

Thanks to new Rules of Court and Judicial Council forms, it is much easier to provide pro bono assistance to clients on a limited scope, both in family law and in other areas of law in which limited scope representation is suitable.¹ Limited scope representation (sometimes referred to as "unbundled" legal services, or "discrete task representation") allows an attorney and client to agree on a defined list of tasks or aspects of a case that each will handle. For example, an attorney may be hired to just draft the pleadings for the client to file in pro per.

Recognizing that few people who need attorneys can afford to hire them on a full service basis, and that some representation is often better than none, the American Bar Association, California State Bar, and California Judicial Council have supported the concept of limited scope representation.

Recognizing that few people who need attorneys can afford to hire them on a full service basis, and that some representation is often better than none, the American Bar Association, California State Bar, and California Judicial Council have supported the concept of limited scope representation. They have redefined ethical and court rules and created forms to facilitate this type of representation. Comprehensive risk management materials and forms for limited scope representation can be found at <http://www.unbundledlaw.org> or <http://www.selfhelpsupport.org>.²

Limited scope representation is ideal for legal specialists because they have

the requisite legal knowledge to assess what tasks the client may perform and what requires the skill of an attorney. They can also inform the client about issues that might arise in the case and properly coach the client as to how to address those issues. Because it requires a comprehensive knowledge of the substantive and procedural law involved, limited scope representation is not for the novice attorney.

Serving as a Mentor

Another way to provide pro bono service is by serving as a mentor to newer attorneys who accept a pro bono assignment. The need for volunteer attorneys often outweighs the number of experienced attorneys willing to accept such cases. Newer attorneys may be willing to accept a pro bono assignment if they have access to an experienced family law attorney who can coach them on the more challenging aspects of the case. This can provide an opportunity for a family law specialist to help a less experienced attorney to properly represent a low-income client who desperately needs legal counsel.

Mentoring less experienced attorneys not only imparts knowledge about the substantive and procedural aspects of a particular area of law it also allows for the sharing of ideology about professionalism in general, ethical duties, attorney/client relationships, communication skills, and how to build one's professional reputation in a legal community. Improving the quality of the legal profession as a whole helps to promote professionalism and integrity in the future practice of law.

Volunteering With Court-Based Self-Help Programs

Many courts are establishing self-help centers to assist those needing to access the court but do not have the ability to hire an attorney. Situations that generally require the assistance of

an attorney, provide opportunities for attorneys to help people through the maze of forms, procedures, etc. More importantly, such assistance can give an individual the general sense of direction in terms of their options and how to accomplish what they need.

There are ample ways for attorneys to provide pro bono service, particularly the legal specialist whose expertise can make all the difference in the world to those who, without pro bono assistance, would be denied meaningful access to the courts, and thus access to justice. To those who perform pro bono service, thank you for the gift of your time and talent. To those who have resisted, thinking your area of practice

To those who perform pro bono service, thank you for the gift of your time and talent. To those who have resisted, thinking your area of practice does not lend itself to pro bono service, please think again.

does not lend itself to pro bono service, please think again. There is no better gift than sharing the talents with which we have been blessed, and no better reward than seeing those who would be denied access to justice given the keys to succeed. ■

**Tina Rasnow is a senior attorney with the Ventura County Superior Court, and a coordinator of its Self-Help Legal Access Center and Homeless Court programs. She is a past president of the Ventura County Bar Association, and has authored articles in local newspapers and professional periodicals on access to justice and diversity issues, including a law review article, "Traveling Justice: Providing Court Based Pro Se Assistance to Limited Access Communities," published in the February 2002 Fordham Urban Law Journal.*

Endnotes

¹ See California Rules of Court, Rules 5.70 and 5.71 for family law, and corresponding Judicial Council forms FL-950 and FL-955; and California Rules of Court, Rules 3.35 through 3.37 for civil matters other than family law, and corresponding

Judicial Council forms MC-950, MC-955 and MC-956.

² M. Sue Talia, a family law attorney in Contra Costa County, developed the extensive risk management materials recognized by the California State Bar, American Bar Association, and other organizations devoted to access to justice issues.

Issue #1 2007 ADMIN NOTES

Exam Scheduled for August 12

The next exam in all specialty areas will take place on Sunday, August 12, 2007, at the Radisson Hotel at LAX and the San Jose Downtown Marriott. If you know of someone who you believe qualifies for certification, please encourage them to apply. Our statistics show that the overwhelming majority of attorneys who sit for the exam receive their information about the Legal Specialization program from their colleagues. Attorneys can access detailed information about the exam and register online at www.californiaspecialist.org.

Send Us Course Information

Have you attended a great course in your specialty area that was not pre-approved for legal specialist credit? Tell us about it – we want to reach out to providers putting on quality, specialist level education to encourage them to apply for credit. Our goals are to make it easier for certified specialists and applicants to find approved education and also to add to the number of specialist level courses being offered by making more providers aware of the Legal Specialization program. Send the information to legalspec@calbar.ca.gov, 415-538-2180 (fax), or Legal Specialization Education, State Bar of California, 180 Howard St, San Francisco, CA, 94105.



C. Rick Chamberlin Award

The Board of Legal Specialization is soliciting nominations for the C. Rick Chamberlin Award, created in 1992 to recognize individuals and organizations who have contributed to the public's awareness of certified specialists and the bar's legal specialization program. It is granted in memory of C. Rick Chamberlin, who was a certified specialist in family law, a long time supporter of the Bar's specialization program, and Chair of the Board of Legal Specialization from 1991-92.

What's New With You?

The Digest is looking for news about certified specialists. Please send us information about your significant milestones, cases/transactions, events in which you've participated, and professional items of interest. While we can't necessarily print everything sent to us, we will pass along as much news as possible about California's certified specialists. Items should be sent to Brad Watson via his email, brad.watson@calbar.ca.gov. ■

Lex (R) Lingua Part III

By James W. Talley*

As I approached my senior year in college, I met with a counselor to make sure that I was on track to graduate on time. The counselor advised me that I needed to complete a series of either science or math courses to satisfy my graduation credit requirements. Faced with that choice, I thought briefly and reasoned that, because I was headed for law school and a legal career, science courses would be irrelevant and I opted for the series of math courses. Little did I know at that time that life was going to play a cruel trick on me.

Specifically, after become a lawyer, I developed a practice limited to family, workers' compensation, and personal injury cases. In each one of these three specialty areas, I am required, on a nearly daily basis, to read medical reports from psychologists on family law custody issues and from orthopedic surgeons, neurologists, and internists in the workers' compensation and personal injury arenas. As a result, I have spent three and a half decades dealing with unintelligible medical chart notes and unfamiliar medical terminology, which my undergraduate and law school studies failed to prepare me for.

With the foregoing confession out of the way, I humbly offer the following medical-legal or Lex (R) primer:

If there is any good news for lawyers in the land of medicalese, it is that both medical and legal terms are drawn largely from Latin with a dose of Greek etymology thrown in for good measure. From the Greek comes the term *iatrogenic*, which over the years I noticed popping up in various medical reports to describe the source or cause of my client's medical woes. After several years of encountering the term and having

no idea what it meant, I finally cracked open our office's three volume medical dictionary and learned that *iatrogenic* is defined as "a condition caused inadvertently by the doctor" (e.g., amputating a patient's healthy left foot instead of the gangrenous right foot). Thus, it became clear that *iatrogenic* is a technical way of describing medical malpractice.

After mentioning my acquired familiarity with the term *iatrogenic* to one of my clients who happened to be a nurse, she immediately acquainted me with the closely related medical term *nosocomial*

After three and a half decades of laboring with the unfamiliar medical terminology in the constant parade of medical reports I have faced, it was heartening to learn that many of the doctors who author the reports I have perused are no more conversant with the medicalese they use than I am.

(also of Greek derivation) which literally means an infection or disease contracted in the hospital. In short, *nosocomial* is also a synonym for medical malpractice.

After three and a half decades of laboring with the unfamiliar medical terminology in the constant parade of medical reports I have faced, it was heartening to learn that many of the doctors who author the reports I have perused are no more conversant with the medicalese they use than I am. As a case in point, one physician included the term *cymophobia* in a report to describe my client's industrially caused condition of fear of falling. Since the doctor did not define the arcane term, I once again dug into my medical dictionary



James W. Talley

only to find that the term *cymophobia* does not mean fear of falling but rather fear of waves, which would be a disastrous affliction for surfers and sailors but not my client, who was a flight attendant. This gave me the delicious opportunity to send off a letter to the good doctor questioning his use of the term *cymophobia* and asking whether he meant either: (a) *basiphobia*, or (b) *basophobia* which are defined respectively as: (a) a persistent, abnormal, and unwarranted fear of inability to stand or falling, and (b) a strong fear of, dislike of, or aversion to inability to stand or falling. Since the doctor had incorrectly used *cymophobia*, which starts with a "c," I left open the possibility that he intended *climacophobia*, defined as the fear of stairs, climbing stairs, or falling down stairs.

Having gotten a taste for the various clinical terms for the multitude of human fears, I dredged up the following sampling of the terms for these fears, most of which apply to either the medical or legal profession.

Medical

- *Iatrophobia*, the fear of doctors and *nosocomephobia*—fear of hospitals, either of which could loosely serve double duty as fear of medical malpractice.

PARKER DIRECTORY

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Now is the Time to Encourage Others to Become Certified: Test now or wait two years!

Do you know someone who is qualified to be a certified specialist in one of these areas?

- Appellate
- Bankruptcy
- Criminal
- Estate Planning, Trust and Probate
- Family
- Franchise and Distribution (NEW!)
- Immigration and Nationality
- Taxation
- Workers' Compensation



Now is an excellent time to encourage them to become a California Certified Specialist. Testing - the first step in becoming a certified specialist - for all areas of certification will be held in August 12, 2007 in Los Angeles and San Jose. Testing won't be held again until August 2009.

The deadline to register to take the test is June 29, 2007. Certification, testing and registration information is available at www.californiaspecialist.org. ■

Legal Specialization Digest

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